SUPREME COURT, U.S.
FILED
JUN 24 1988
JOSEPH F. SPANIOL, JR.
CLERK

Nos. 87-1943 and 87-1956

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MINNESOTA NEWSPAPER ASSOCIATION, INC.,
Appellant,

v.

POSTMASTER GENERAL OF THE UNITED STATES, *et al.*,
Appellees.

ANTHONY M. FRANK, POSTMASTER GENERAL
OF THE UNITED STATES, *et al.*,
Appellants,

v.

MINNESOTA NEWSPAPER ASSOCIATION, INC.,
Appellee.

On Appeals from the United States District Court for the District of Minnesota

---

BRIEF OF AMICI CURIAE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, BIG BROTHERS AND SISTERS OF SPOKANE COUNTY, KICKAPOO TRIBE IN KANSAS, NATIVE AMERICAN PRESS ASSOCIATION, AND VETERANS OF FOREIGN WARS OF THE UNITED STATES IN SUPPORT OF MINNESOTA NEWSPAPER ASSOCIATION, INC.

Of Counsel:

W. TERRY MAGUIRE
RENÉ P. MILAM
AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION
Box 17407 Dulles Airport
Washington, D.C. 20041
Attorneys for American Newspaper Publishers Association

P. CAMERON DEVORE *
MARSHALL J. NELSON
STUART R. DUNWOODY
DAVIS WRIGHT & JONES
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101
(206) 622-3150
Counsel for Amici Curiae

* Counsel of Record

(Additional of Counsel Listed on Inside Cover)

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

DENNIS W. MCLAUGHLIN
LUKINS & ANNIS
1600 Washington Trust
Financial Center
West 717 Sprague Avenue
Spokane, Washington 99204-0466
Attorneys for Big Brothers
and Sisters of Spokane County

CHARLES V. HAMM
2505 S.W. 22nd Street
Topeka, Kansas 66611
Attorney for
Kickapoo Tribe in Kansas

JEANNE S. WHITEING
WHITEING, THOMPSON & WHITE
6684 Gunpark Drive
Boulder, Colorado 80301
Attorneys for Native
American Press Association

TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST	2
FACTUAL BACKGROUND	3
ARGUMENT	4
I. DISSEMINATION OF BOTH NEWS AND ADVERTISING SERVES THE PUBLIC'S INTEREST IN SELF-GOVERNMENT AND IS PROTECTED BY THE FIRST AMENDMENT	4
II. THE FEDERAL GOVERNMENT HAS NO SUBSTANTIAL INTEREST IN PREVENTING DISSEMINATION OF INFORMATION ABOUT GAMBLING	7
A. The Federal Government Has No Substantial Interest in Preventing Mere Information from Crossing State Lines	7
B. The Federal Government Has No Substantial Interest in Discouraging Gambling Within the Individual States	10
III. THE MAILING PROHIBITIONS ARE NOT NARROWLY TAILORED TO ADDRESS THE ASSERTED GOVERNMENT INTERESTS	12
A. The Mailing Prohibitions Effectively Prevent Even Nonmailed Advertising Within Its State of Origin	12
B. Less Intrusive Alternatives Already Exist in the Statute	13
CONCLUSION	13

TABLE OF AUTHORITIES

CASES: Page

Bigelow v. Virginia, 421 U.S. 809 (1975) 8, 9
Bolger v. Youngs Drug Products Corp., 463 U.S. 60 (1983) 9, 12
Butler v. Michigan, 352 U.S. 380 (1957) 9
Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691 (1984) 10
Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980) 7, 9, 12
Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975) 10
Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U.S. 407 (1921) 13
Posadas de Puerto Rico Associates v. Tourism Co., 478 U.S. 328 (1986) 3, 7
Smith v. United States, 431 U.S. 291 (1977) 11
Thornhill v. Alabama, 310 U.S. 88 (1940) 4
Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) 4, 6

CONSTITUTIONAL PROVISIONS:

U.S. Const. Amend. I ..... *passim*

STATUTES:

18 U.S.C. § 1301 13
18 U.S.C. § 1302 13
18 U.S.C. § 1307 9
Act of June 8, 1872, ch. 335, § 149, 17 Stat. 283, 302 11

OTHER AUTHORITIES:

H.R. Rep. No. 2678, 49th Cong., 1st Sess. (1886) 11
S. Rep. No. 1579, 51st Cong., 1st Sess. (1890) 11
S. Rep. No. 537, 98th Cong., 2d Sess. (1984) 5, 6, 9, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

Nos. 87-1943 and 87-1956

MINNESOTA NEWSPAPER ASSOCIATION, INC.,
Appellant,

v.

POSTMASTER GENERAL OF THE UNITED STATES, *et al.*,
Appellees.

ANTHONY M. FRANK, POSTMASTER GENERAL
OF THE UNITED STATES, *et al.*,
Appellants,

v.

MINNESOTA NEWSPAPER ASSOCIATION, INC.,
Appellee.

On Appeals from the United States District Court for the District of Minnesota

---

BRIEF OF AMICI CURIAE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, BIG BROTHERS AND SISTERS OF SPOKANE COUNTY, KICKAPOO TRIBE IN KANSAS, NATIVE AMERICAN PRESS ASSOCIATION, AND VETERANS OF FOREIGN WARS OF THE UNITED STATES IN SUPPORT OF MINNESOTA NEWSPAPER ASSOCIATION, INC.

STATEMENT OF INTEREST

This brief is submitted on behalf of five amici curiae who include publishers of newspapers, news media serving the American Indian community, charitable organizations, and an Indian tribe.*

The American Newspaper Publishers Association ("ANPA") is a national trade association representing over 1,400 newspapers located primarily in the United States and Canada. Its membership constitutes approximately 90% of the total daily and Sunday newspaper circulation, and a substantial portion of the weekly newspaper circulation, in the United States. Virtually all ANPA members distribute some copies of their newspapers by mail and are therefore directly affected by the mailing prohibitions that are the subject of these appeals.

In addition, ANPA has a general interest, expressed on numerous occasions as amicus curiae in this Court, in the preservation of First Amendment protection for both news and advertising. This concern goes beyond an interest in publishing the specific news and advertising involved in these appeals; it is a general concern that government restrictions on the content and distribution of newspapers be subjected to the most careful scrutiny consistent with First Amendment principles enunciated by this Court.

The Native American Press Association ("NAPA") comprises approximately 90 members representing the newspaper, radio and television media serving the American Indian population in the United States. NAPA has a similar interest in these appeals to that of ANPA.

Big Brothers and Sisters of Spokane County, Veterans of Foreign Wars of the United States, and Kickapoo Tribe in Kansas are charitable organizations and an Indian tribe that conduct lawful gaming activities such as drawings, bingo and other games of chance as fundraising activities to support their social service programs.

---

* Written consent of both parties has been filed with the Clerk of the Court, as required by Supreme Court Rule 36.

The prohibition challenged on these appeals prevent them from using the mails to promote these entirely legal activities, even within their local communities. They are also effectively prevented from advertising in their local newspapers if any copies—even a minuscule percentage of the total circulation—will be mailed to subscribers. As a result, they are denied the two most cost-effective means of reaching potential participants and supporters of these legally sanctioned fundraising activities.

For all of the above-stated reasons amici support the position of appellant/appellee Minnesota Newspaper Association in these appeals.

FACTUAL BACKGROUND

The statutes under review purport to prohibit only the *mailing* of newspapers containing information about lotteries, but their effect goes much further. Because it is not feasible for most newspapers to recompose and reprint a "sanitized" version of the newspaper solely for mail delivery, the practical result of the prohibition is to ban lawful advertising of games of chance in *all* copies of the newspaper, even if the vast majority are home-delivered or sold in newsracks within the state and community where the games are lawful. Faced with the Hobson's choice of either refusing lottery advertising or losing their mail distribution, newspapers are forced to forego the advertising.

This indirect, yet substantial, effect of the restrictions is significant. It highlights the difference between the facts in this case and the facts involved in *Posadas de Puerto Rico Associates v. Tourism Co.*, 478 U.S. 328 (1986), relied upon by the District Court as authority for upholding the advertising restrictions. In *Posadas* both the purpose and the effect of Puerto Rico's regulatory scheme was to prevent local casino advertising from reaching residents of Puerto Rico, while preserving the ability of casinos to reach out-of-state tourists, the intended audience of such advertising. In the present case the purpose of the mailing restriction, according to the District Court, is to prevent lottery information from

reaching the residents of states other than the state of origin, but the substantial effect is to bar dissemination of that information to its intended audience—residents within the state and community where the newspaper is published and the advertised activity is legal.

ARGUMENT

I. DISSEMINATION OF BOTH NEWS AND ADVERTISING SERVES THE PUBLIC'S INTEREST IN SELF-GOVERNMENT AND IS PROTECTED BY THE FIRST AMENDMENT

This Court in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976) recognized the intrinsic value of purely commercial speech:

> So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. . . . And if it is indispensable to the proper allocation of resources in a free enterprise system, it is also indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered.

More broadly, the Court has invariably recognized that the core purpose of the First Amendment is to protect dissemination of all information necessary for the public to address the full range of social problems confronting them. *See, e.g., Thornhill v. Alabama*, 310 U.S. 88, 102 (1940).

Information concerning gambling—both pure news and pure advertising—fulfills both of these functions. At the most immediate level, the advertising prohibited by these statutes conveys useful commercial information. It tells the public what kind of legal games are available and where, the stakes involved, and the sponsoring organiza-

tions. On a more general level, the audience for such advertising is not confined to people who want to gamble; it also includes people who are interested in inexpensive social entertainment, people who are concerned about support for charitable causes,[1] and even people who are adamantly opposed to gambling. Here, the advertising provides the most direct information about the nature, scope, and sponsorship of gaming activities to the voters whose individual decisions will determine whether and to what extent a state permits gambling in the first place.

This critical point was overlooked by the District Court in holding that the federal government has an interest in "protecting the policy choices of the individual states" by keeping gambling information out of those states. App. at 12a. Such policy choices are not made by the "states" in the abstract; they are made by the citizens of those states, a fact which, ironically, the court acknowledged by expressing concern that removal of mailing restrictions "may lead some states to liberalize their lottery regulations in order to encourage commerce." App. at 11a. But this is not an evil to be avoided by federal regulation—it is the essence of democratic self-government. If voters are called upon to either approve or prohibit forms of gambling within their states, they cannot do so intelligently without adequate information about the nature of the activities themselves. The public cannot rely on an occasional news story or editorial for

---

[1] With the dramatic decline in government funding, this concern takes on particular importance. *See, e.g.*, S. Rep. No. 537, 98th Cong., 2d Sess. 3 (1984) [hereinafter S. Rep. No. 537]:

> It is incongruous that the Congress, at a time when churches and charities in the private sector are increasingly assuming the burden of many social programs, should stand in the way of those States which have made a policy determination that churches and charities can use lotteries and raffles as a means of raising desperately needed revenues.

The Judiciary Committee concurred in this observation by one witness during hearings on the same statutes under review in the present case. *Id.*

this information. The true extent and character of gaming activities in a community are best conveyed by the sponsors' own announcements—*i.e.*, advertising. If these are barred from the mails and local newspapers, only participants and members of sponsoring organizations are likely to have this information, and even then, it will be limited. The broad overview necessary for informed decision-making depends on wider dissemination through mail and newspaper advertising.

The District Court understood the function of news about lottery prizes in this process, striking down the prohibition against their publication on pure First Amendment grounds, and this Court should uphold that finding against the government's present appeal. However, this Court should also reaffirm the valuable function of advertising in the democratic process and strike down the remaining restrictions as inconsistent with the First Amendment.

In simple terms, the fact that the advertising in this case involves gambling should increase, rather than diminish, First Amendment concerns. The use of gambling to fund charitable and social programs of states, Indian tribes, and other organizations is more than commercial activity—it is also an emotional political issue [2] and an activity that traditionally has been subject to extensive state regulation. The subject is therefore one about which the public has a particular need to know the facts, as they are the ultimate authors of those "policy choices of the individual states" that the District Court seeks to protect. Commercial speech in this context is truly "indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered." *Virginia State Board*, 425 U.S. at 765.

---

[2] *See, e.g.*, S. Rep. No. 537, *supra* note 1 at 11-13 (additional views of Senators Hatch and East).

II. THE FEDERAL GOVERNMENT HAS NO SUBSTANTIAL INTEREST IN PREVENTING DISSEMINATION OF INFORMATION ABOUT GAMBLING

The Court in *Posadas* reaffirmed application of the four-part test of *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980),[3] in analyzing restrictions on gambling advertising. Although, as discussed above, gambling information should be accorded even broader First Amendment protection, the statutes here in question fail even the lenient standard of *Central Hudson*. The federal government's interest simply is not substantial enough to justify what is, in effect, a total ban on mail and newspaper advertising of these state-sanctioned gaming activities.

A. The Federal Government Has No Substantial Interest in Preventing Mere Information From Crossing State Lines

The district court articulated two federal interests served by the prohibition against mailing lottery information: (1) a general interest in protecting the individual states' interest in the "health, safety, and welfare" of their citizens; and (2) a conveniently revived interest in preventing the rise of national private lotteries. The court noted that the first of these—the general interest in "health, safety, and welfare"—was held by this Court in *Posadas* to be a substantial interest served by Puerto Rico's regulation of advertising within its borders. But as previously noted, both the purpose and effect of that regulatory scheme was to strike an unusual balance between the commonwealth's sharply conflicting interests in encouraging gambling by out-of-state tourists, while at

[3] *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 566 (1980), sets forth a four part analysis for restrictions on commercial speech. First, the commercial speech must concern lawful activity and not be misleading. Second, the asserted governmental interest in regulating the speech must be substantial. Third, the regulation must directly advance the asserted governmental interest. Fourth, the regulation must not be more extensive than is necessary to serve that interest.

the same time discouraging local participation. On closer examination, it is clear that the general police power of the states is not a logical basis for finding that the federal government has a substantial interest in preventing information, commercial or otherwise, from reaching citizens of those states.

First, the argument *assumes* that the individual states have a substantial interest in discouraging lotteries and games of chance—an assumption that is not borne out by the facts.[4] But more importantly, the district court's conclusion is based on a misunderstanding of this Court's reasoning in *Bigelow v. Virginia*, 421 U.S. 809 (1975). In *Bigelow*, the Court struck down the state of Virginia's attempt to prevent advertising of abortion services available in New York, where such services were legal. The Court recognized:

> [Virginia] is, in effect, advancing an interest in shielding its citizens from information about activities outside Virginia's borders, activities that Virginia's police powers do not reach. This asserted interest, even if understandable, was entitled to little, if any, weight under the circumstances.

Id. at 828-29.[5] The Court concluded that the state could not bar such advertising of lawful out-of-state activities "without unconstitutionally infringing upon . . . First Amendment rights." *Id.* at 829. The District Court in this appeal, however, cited this same reasoning for the proposition that because the state "cannot prohibit local advertising of out-of-state services which are legal in the advertiser's state," it logically follows that the federal government must step in to protect this unconstitutional *state* interest. *See* App. at 8a-9a. The argument is circular and misunderstands the constitutional dimension of the prohibition in *Bigelow*.

---

[4] *See* discussion *infra* at 11.

[5] The Court went on to note that where, as in the present case, sanctions against advertising are imposed on the newspaper that carries the advertisements, "the prosecution . . . incur[s] more serious First Amendment overtones." 421 U.S. at 828.

The District Court's reasoning is also flawed in its assumption that the states would choose to prevent out-of-state gambling information from reaching their citizens as a means of regulating gambling activities within their own borders. Disregarding for the moment whether such an interest could ever be constitutional under *Bigelow* and *Central Hudson*, there is no evidence that any appreciable number of states would espouse such an interest. Only a few states currently prohibit all forms of gambling; in fact, most states permit recreational and fund-raising games of chance, horse racing, and other traditional forms of wagering.[6]

On these facts, the federal interest in prohibiting the dissemination of gambling information can hardly be seen as substantial. Stated simply, the government has no substantial and constitutionally legitimate interest in reducing discourse, even on this subject, to the level permitted by the most restrictive state, particularly where the practical effect is to deny information to citizens within the vast majority of states where the activities are legal.[7]

Finally, the exceptions in 18 U.S.C. § 1307, which permit advertising of state-conducted lotteries, demonstrate that the interest in restricting gambling information is not substantial. The district court, however, summarily rejected this argument, reasoning that Section 1307 permits only advertisements in newspapers published within states conducting such a lottery and therefore "does not affect newspapers in nonlottery states." App. at 10a. What the court overlooked, however, is the fact that once the state of origin qualification is met, state lottery advertising can be mailed anywhere in the United States. The federal scheme thus permits lottery information and advertising concerning the largest lottery activities in the country to be mailed into any state, while restricting

---

[6] S. Rep. No. 537, *supra* note 1 at 1-2; Exhibit B to Affidavit of Mark R. Anfinson at 2.

[7] *See Bolger v. Youngs Drug Prod. Corp.*, 463 U.S. 60, 73-74 (1983); *Butler v. Michigan*, 352 U.S. 380, 383 (1957).

information about small local charity-sponsored activities from reaching members of their own communities through the mail. The inconsistency of such an approach itself refutes the claimed substantiality of the government's interest.[8]

B. The Federal Government Has No Substantial Interest in Discouraging Gambling Within the Individual States

The second "substantial" interest articulated by the district court is the government's claimed interest in restricting the interstate growth of private lotteries and its attendant concerns about possible criminal involvement. In this, both the government and the District Court seek to prove too much. The legitimate federal interest in preventing interstate crime is a separate concern that has only the most tenuous relation to a prohibition against mailing information. It is the states, not the federal government, that have a substantial interest in determining whether and to what extent they will permit, prohibit, and/or regulate gambling within their borders. The government has made no showing whatsoever that *information* about a strictly local and legal game of chance advertised in a local newspaper that happens to be mailed, poses any threat of becoming or encouraging an interstate private lottery.

Amici respectfully submit that the government's argument is nothing more than a post facto rationalization

---

[8] *See Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 715 (1984):

> The modest nature of Oklahoma's interest may be further illustrated by noting that Oklahoma has chosen not to press its campaign against alcoholic beverage advertising on all fronts. . . . The ban at issue in this case is directed only at wine commercials that occasionally appear on out-of-state signals carried by cable operators. By their own terms, therefore, the State's regulatory aims in this area are narrow. . . . [T]he selective approach Oklahoma has taken toward liquor advertising suggests limits on the substantiality of the interests it asserts here.

See also Erznoznik v. City of Jacksonville, 422 U.S. 205, 215 (1975).

based on the century-old legislative purpose of the original Lottery Act, Act of June 8, 1872, ch. 335, § 149, 17 Stat. 283, 302, which is no longer valid. Of the forty-two states in existence in 1890, all but three prohibited lotteries altogether, responding to the widespread evil of "completely unregulated and generally fraudulent wagering schemes."[9] Congress, which shared the states' desire to abolish these lotteries, enacted the Lottery Act to prevent use of the mails as a means to evade this almost universal prohibition.[10]

Today the situation has completely reversed. Forty-five states now *permit* wagering on bingo and other amusements, thirty-six permit betting on horse races, and at least eighteen states conduct and advertise their own lotteries.[11] Virtually all are closely regulated and provide much-needed funding for charities and social programs. The widespread anti-lottery sentiment reflected in the 1890 Lottery Act no longer exists. Yet the District Court declared that the concern expressed in legislative history "remains relevant and substantial" because of the possibility of criminal involvement. App. at 11a. As previously noted, these are two separate concerns, and whatever substantiality the latter may have in the abstract is addressed through increased regulatory supervision, not through suppression of information.[12]

---

[9] S. Rep. No. 537, *supra* note 1 at 1; S. Rep. No. 1579, 51st Cong., 1st Sess. 1 (1890). (Counsel is indebted to Margaret L. Gready and Gannett Co. for research on the legislative history of the Lottery Act.)

[10] H.R. Rep. No. 2678, 49th Cong., 1st Sess. (1886).

[11] S. Rep. No. 537, *supra* note 1, at 1-2. These figures are as of 1984; ten additional states now conduct or have authorized lotteries.

[12] This court's decision in *Smith v. United States*, 431 U.S. 291 (1977), relied upon by the District Court, does not aid the government's position. In that case, the material being mailed was obscene and thus not entitled to constitutional protection. Legal gambling advertising, on the other hand, is entitled to at least the First Amendment protection accorded commercial speech. *See* discussion *supra* at 7-11.

III. THE MAILING PROHIBITIONS ARE NOT NARROWLY TAILORED TO ADDRESS THE ASSERTED GOVERNMENT INTERESTS

Even if substantiality of the government interest is assumed for the sake of argument, the means chosen to advance that interest are not confined to the narrow limits required by the First Amendment and this Court's decision in *Central Hudson*.

A. The Mailing Prohibitions Effectively Prevent Even Nonmailed Advertising Within Its State of Origin

A newspaper faced with the prospect of criminal prosecution and loss of its mailing privileges by publishing advertising for strictly local and legal games of chance will make the obvious choice to forego the advertising. Thus, a mailing restriction designed to prevent interstate dissemination of advertising effectively prevents mailing within the state and ultimately forecloses the local newspaper as a medium for such advertising. The organizations that depend on local participation in their games are barred from reaching their audience not only through the mail, but also through direct delivery of the newspaper.

To say that the regulation goes too far is an understatement. It not only encroaches upon activities that are completely legal within the state and advertising that is protected by the First Amendment; it does so for the declared purpose of preventing such advertising from crossing state lines. The end result is a regulation whose purpose is directed only at the smallest percentage of newspaper circulation, yet whose effect prohibits publication of completely lawful gambling advertising altogether and forbids even local direct mail advertising.[13]

---

[13] This restriction on the use of the mails is far from insignificant. *Bolger v. Youngs Drug Prod. Corp.*, 463 U.S. 60, 69 n.18

B. Less Intrusive Alternatives Already Exist in the Statute

If the government's declared purposes—*i.e.*, to restrain the growth of interstate lotteries and to protect the autonomy of individual state gambling policies—are taken at face value, those purposes can be served much more directly. Interstate mailing or transportation of lottery paraphernalia and use of the mails to actually conduct or participate in a lottery are already prohibited. 18 U.S.C. §§ 1301, 1302.[14] By choosing in addition to prevent the mailing of information, the government has stepped far beyond even its stated goals and encroached upon commercial speech clearly protected by the First Amendment. It has effectively denied those charitable organizations who rely upon lawful games of chance for fundraising the two most effective means to promote these worthy activities—the mail and the newspaper.

CONCLUSION

Information about lawful gaming activities, even in the form of advertising, is more than pure commercial speech. It is the factual base upon which the public forms its decisions about whether and to what extent such activities should be permitted and regulated. No legitimate purpose is served by prohibiting the dissemination of this information, even to citizens of those states who have not yet decided these questions.

(1983) (quoting *Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U.S. 407, 437 (1921) (Holmes, J., dissenting):

> The United States may give up the Post Office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues. . . .

[14] The portions of the statutes prohibiting interstate mailing or transportation of lottery paraphernalia and use of the mails to conduct or participate in the lottery do not raise First Amendment concerns as they regulate conduct, not speech.

The present law, by discouraging even local newspaper advertising, prevents lawful gaming information from reaching its intended audience—citizens of communities where the games are authorized. This result goes beyond even the stated purposes of the law and infringes First Amendment rights of both the advertisers and the public.

For all of the above reasons, the statutes challenged by the Minnesota Newspaper Association should be overturned.

Respectfully submitted,

P. CAMERON DEVORE *
MARSHALL J. NELSON
STUART R. DUNWOODY
DAVIS WRIGHT & JONES
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101
(206) 622-3150
Counsel for Amici Curiae

* Counsel of Record

Of Counsel:

W. TERRY MAGUIRE
RENÉ P. MILAM
AMERICAN NEWSPAPER
PUBLISHERS ASSOCIATION
Box 17407 Dulles Airport
Washington, D.C. 20041
Attorneys for American Newspaper Publishers Association

DENNIS W. MCLAUGHLIN
LUKINS & ANNIS
1600 Washington Trust
Financial Center
West 717 Sprague Avenue
Spokane, Washington 99204-0466
Attorneys for Big Brothers and Sisters of Spokane County

CHARLES V. HAMM
2505 S.W. 22nd Street
Topeka, Kansas 66611
Attorney for Kickapoo Tribe in Kansas

JEANNE S. WHITEING
WHITEING, THOMPSON & WHITE
6684 Gunpark Drive
Boulder, Colorado 80301
Attorneys for Native American Press Association

June 24, 1988